

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Free Spirit Publishing Inc.,

Case No. 21-cv-0938 (WMW/HB)

Plaintiff,

v.

**ORDER DENYING DEFENDANTS'  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

David Dworsky and Kanilen Dworsky,

Defendants.

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Plaintiff Free Spirit Publishing Inc. (Free Spirit) commenced this action against Defendants on April 6, 2021, asserting claims for breach of contract, unjust enrichment, conversion, and declaratory judgment. Defendants David Dworsky and Kanilen Dworsky filed a motion for judgment on the pleadings on July 9, 2021. (Dkt. 12.) Subsequently, United States Magistrate Judge Hildy Bowbeer granted Plaintiff's motion for leave to amend the complaint. (Dkt. 48.) On September 24, 2021, Plaintiff filed an amended complaint that includes several revisions, including additional factual allegations and an additional claim for reformation. (Dkt. 49.)

An amended complaint supersedes an original complaint and divests the original complaint of any legal effect. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005). For this reason, when a plaintiff files an amended complaint while a motion to dismiss is pending, the amended complaint typically renders the motion to dismiss moot. *Onyiah v. St. Cloud State Univ.*, 655 F. Supp. 2d 948, 958 (D. Minn. 2009) (citing *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir.

2002)). “A motion for judgment on the pleadings is treated under the same standard as a motion to dismiss . . . .” *Loeffler v. City of Anoka*, 79 F. Supp. 3d 986, 991 (D. Minn. 2015). Because motions to dismiss and motions for judgment on the pleadings are evaluated under the same standard, the filing of an amended complaint also moots a pending motion for judgment on the pleadings. As that is the circumstance here, Defendants’ motion for judgment on the pleadings is denied without prejudice as moot.

### **ORDER**

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Defendants’ motion for judgment on the pleadings, (Dkt. 12), is **DENIED WITHOUT PREJUDICE** as moot. The October 19, 2021 hearing on Defendants’ motion for judgment on the pleadings is **CANCELLED**.

Dated: September 28, 2021

s/Wilhelmina M. Wright  
Wilhelmina M. Wright  
United States District Judge